

ESTTA Tracking number: **ESTTA403936**

Filing date: **04/15/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Bombshell Accessories, Inc.		
Entity	Corporation	Citizenship	New York
Address	248 West 35th Street Suite 601 New York, NY 10001 UNITED STATES		

Attorney information	James J. Saul Baker & Daniels LLP 311 South Wacker Drive Suite 4400 Chicago, IL 60606 UNITED STATES james.saul@bakerd.com, stephanie.gumm@bakerd.com, inteas@bakerd.com Phone:312 212 6541
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Applicant Information

Application No	77916216	Publication date	04/12/2011
Opposition Filing Date	04/15/2011	Opposition Period Ends	05/12/2011
Applicant	Kimaya USA, Inc. Unit #3 700 Penhorn Avenue Secaucus, NJ 07094 UNITED STATES		

Goods/Services Affected by Opposition

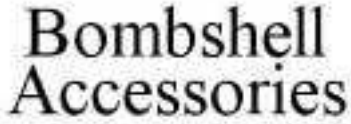
Class 014. First Use: 2010/04/26 First Use In Commerce: 2010/04/26
All goods and services in the class are opposed, namely: Watches

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3648795	Application Date	08/20/2004
Registration Date	06/30/2009	Foreign Priority Date	NONE
Word Mark	BOMBSHELL ACCESSORIES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 014. First use: First Use: 2008/07/00 First Use In Commerce: 2008/07/00 body jewelry, costume jewelry, novelty jewelry

Attachments	78470741#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (4 pages)(14278 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/James J. Saul/
Name	James J. Saul
Date	04/15/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Bombshell Accessories, Inc.,)	U.S. Trademark Application Serial No. 77/916,216
)	
Opposer,)	Mark: BOMBSHELL
)	
v.)	Opposition No.: _____
)	
Kimaya USA, Inc.,)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Bombshell Accessories, Inc., a New York corporation, having a principal place of business at 248 West 35th Street, Suite 601, New York, New York 10001 ("Opposer"), believes it will be damaged by the registration of the mark "BOMBSHELL" that is the subject of U.S. Trademark Application Serial No. 77/916,216 (the "Application") and hereby opposes registration of same. In support of its opposition, Opposer, by its attorneys, states as follows:

1. Opposer is one of the country's leading wholesalers of designer body, costume, and novelty jewelry and related accessories.
2. Opposer is the registered owner of all right, title, and interest in and to the trademark BOMBSHELL ACCESSORIES used in conjunction with body, costume, and novelty jewelry.
3. Opposer has used its BOMBSHELL ACCESSORIES mark in conjunction with body, costume, and novelty jewelry in the United States since at least as early as July 2008.
4. Opposer has spent significant amounts of revenue and resources in the marketing and sale of its goods bearing the BOMBSHELL ACCESSORIES mark.

5. Opposer has made extensive and continuous sales of its goods bearing the BOMBSHELL ACCESSORIES mark.

6. Through its marketing efforts and long-standing use of the BOMBSHELL ACCESSORIES mark in conjunction with its body, costume, and novelty jewelry, the purchasing public has come to associate the term BOMBSHELL ACCESSORIES exclusively with Opposer.

7. Through its marketing efforts and long-standing use of the BOMBSHELL ACCESSORIES mark in conjunction with its body, costume, and novelty jewelry, Opposer has developed exceedingly valuable goodwill in BOMBSHELL ACCESSORIES as a mark in the jewelry industry.

8. Opposer is the owner of all right, title, and interest in and to U.S. Trademark Registration No. 3,648,795 for the mark BOMBSHELL ACCESSORIES, filed on August 20, 2004, and registered on June 30, 2009 (the "Registration").

9. In the Registration, Opposer entered a disclaimer that no claim is made to the exclusive right to use the term "ACCESSORIES" apart from the mark as shown.

10. The Registration constitutes *prima facie* evidence of the validity of the registered mark, of Opposer's ownership of the mark, and of Opposer's exclusive right to use the mark in commerce on or in connection with the goods specified in the Registration.

11. On or about January 20, 2010, Kimaya USA, Inc., a New Jersey corporation ("Applicant"), has, through the Application, sought to register the mark BOMBSHELL for "watches" ("Applicant's Goods"). The Application states that Applicant first used the mark BOMBSHELL in the United States as of April 2010.

12. On April 12, 2011, the Application was published for opposition.

13. There is no issue as to priority of use, because Opposer has used its BOMBSHELL ACCESSORIES mark since at least as early as July 2008, which is prior to the date of first use set forth in the Application.

14. The mark set forth in the Application is confusingly similar to the BOMBSHELL ACCESSORIES mark.

15. Applicant's Goods and the goods sold by Opposer under its BOMBSHELL ACCESSORIES mark are identical and/or closely related.

16. The conditions surrounding the marketing of Applicant's Goods and the goods sold by Opposer under its BOMBSHELL ACCESSORIES mark are such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source.

17. Opposer will be damaged by registration of the BOMBSHELL mark by Applicant because such registration will grant to Applicant *prima facie* evidence of the exclusive right to use the mark in conjunction with Applicant's Goods and such use would be likely to cause confusion or mistake or to deceive as to the affiliation, connection, or association of Applicant with Opposer and as to the origin, sponsorship, and approval of Applicant's Goods, services, and other commercial activities by Opposer.

18. Such confusion would cause irreparable harm to Opposer in that any defects or fault found with Applicant's Goods, services, or other commercial activities would erroneously be attributed to Opposer, thereby harming Opposer's reputation and damaging its substantial goodwill in the BOMBSHELL ACCESSORIES mark.

For all of the foregoing reasons, Opposer will be damaged by the registration of the mark BOMBSHELL sought to be registered by Applicant.

WHEREFORE, Opposer respectfully requests that the Board deny registration of Applicant's BOMBSHELL mark sought through the Application.

Respectfully submitted,

/James J. Saul/
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Attorneys for Opposer

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this notice is being filed with the Trademark Trial and Appeal Board, Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, by using the ESTTA electronic filing system, this 15th day of April 2011.

/James J. Saul/
James J. Saul

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Notice of Opposition" has been served on Applicant's Attorney, Dara L. Onofrio, with Onofrio Law, 15 North Mill Street, Suite 225, Nyack, New York 10960 via first class mail, today April 15, 2011.

/James J. Saul/
James J. Saul